

## DORSEY & WHITNEY

*A Partnership Including Professional Corporations*

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US EPA RECORDS CENTER REGION 5



514251

510 NORTH CENTRAL LIFE TOWER  
445 MINNESOTA STREET  
ST. PAUL, MINNESOTA 55101  
(612) 227-8017

P. O. BOX 848  
340 FIRST NATIONAL BANK BUILDING  
ROCHESTER, MINNESOTA 55903  
(507) 288-3156

312 FIRST NATIONAL BANK BUILDING  
WAYZATA, MINNESOTA 55391  
(612) 475-0373

201 DAVIDSON BUILDING  
8 THIRD STREET NORTH  
GREAT FALLS, MONTANA 59401  
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SUITE 675 NORTH  
1800 M STREET N.W.  
WASHINGTON, D. C. 20036  
(202) 955-1050

30 RUE LA BOËTTE  
75008 PARIS, FRANCE  
011 331 562 32 50

April 29, 1985

Stephen Shakman, Esq.  
Special Assistant Attorney General  
Minnesota Pollution Control Agency  
4th Floor  
1935 West County Road B2  
Roseville, Minnesota 55402

Re: United States of America, et al v. Reilly  
Tar & Chemical Corporation, et al

Dear Steve:

Enclosed and hereby served upon you by United States  
mail please find the Answer of Reilly Tar & Chemical Corporation  
to the Second Amended Complaint in Intervention of the State  
of Minnesota.

Very truly yours,

Michael J. Wahoske

MJW/kmh

cc: (w/enc.) All Counsel of Record

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

UNITED STATES OF AMERICA,

Civil No. 4-80-469

Plaintiff,

and

STATE OF MINNESOTA, by its  
Attorney General Hubert H.  
Humphrey, III, its Department  
of Health, and its Pollution  
Control Agency,

Plaintiff-Intervenor,

vs.

REILLY TAR & CHEMICAL CORPORATION;  
HOUSING AND REDEVELOPMENT AUTHORITY  
OF ST. LOUIS PARK; OAK PARK VILLAGE  
ASSOCIATES; RUSTIC OAKS CONDOMINIUM,  
INC.; and PHILIP'S INVESTMENT CO.,  
Defendants,

AMENDED ANSWER OF REILLY  
TAR & CHEMICAL CORPORATION  
TO THE SECOND AMENDED  
COMPLAINT IN INTERVENTION  
OF THE STATE OF MINNESOTA

and

CITY OF ST. LOUIS PARK,

Plaintiff-Intervenor,

vs.

REILLY TAR & CHEMICAL CORPORATION,

Defendant,

and

CITY OF HOPKINS,

Plaintiff-Intervenor,

vs.

REILLY TAR & CHEMICAL CORPORATION,

Defendant.

Reilly Tar & Chemical Corporation (hereinafter "Reilly") for its answer to the second amended complaint in intervention herein, admits and alleges as follows:

1. Admits that paragraph 1 correctly describes the allegations in the amended complaint of the United States and in the State of Minnesota amended complaint in intervention, but denies those allegations except as may be admitted elsewhere in this answer.

2. Admits that this Court has jurisdiction under the provisions of 42 U.S.C. § 9618, if that section may constitutionally be applied in this case, but denies that this Court has jurisdiction over this case under the other provisions of law referred to or under any other provision of law.

3. Admits that venue is proper in this District, provided the Court has jurisdiction over the subject matter of the action.

4. Admits paragraph 4.

5. Admits paragraph 5, except that Reilly denies the clause concerning Minn. Stat. § 115B.17, subd. 6 (1984) as written in the second amended complaint and admits only that the Attorney General is empowered by Minn. Stat. § 115B.17, subd. 6 (1984) to bring a civil action to recover any reasonable and necessary expense incurred by the Minnesota Pollution Control Agency or its Director pursuant to Minn. Stat. § 115B.17.

6. Admits paragraph 6.

7. Admits paragraph 7.

8. Reilly incorporates by reference paragraphs 5 through 23 of its answer to the first amended complaint of the plaintiff United States of America. Reilly admits that a municipal well located in the City of Hopkins was closed on February 8, 1981 because the City was instructed by the State of Minnesota to close that well, but denies knowledge sufficient to form a belief with respect to the remaining allegations in said paragraph.

9. Admits that the State of Minnesota has expended large sums of money on studies relating to the former Reilly site, but denies that these sums have been reasonably spent and specifically denies that these sums have been reasonably spent and specifically denies that these expenditures and other efforts associated with the site were consistent with the National Contingency Plan or were reasonable and necessary.

10. Admits that chemicals which, among other things, are components of coal tar have been found in soil and groundwater in the vicinity of the former plant site in St. Louis Park, denies that those components are present in amounts sufficient to make the drinking water toxic or carcinogenic, and otherwise denies the allegations in paragraph 10.

11. Admits that activities by the State of Minnesota relating to the former Reilly site have involved considerable

expense, but denies that such activities were reasonable or necessary and denies that there is a serious or potentially disastrous situation resulting from Reilly's operations; denies that Reilly has refused to take any corrective action, rather Reilly has consistently made it clear that it would assist in proposing solutions, but objects to the extensive spending proposals suggested by the State of Minnesota and the Environmental Protection Agency.

12. Reilly realleges and incorporates by reference paragraphs 1 through 11 of this answer.

13. Admits paragraph 13.

14. Admits paragraph 14.

15. Denies paragraph 15.

16. Admits paragraph 16.

17. Admits paragraph 17.

18. Denies paragraph 18.

19. Denies paragraph 19.

20. Reilly realleges and incorporates by reference paragraphs 1 through 11 of this answer.

21. Denies paragraph 21.

22. Denies paragraph 22.

23. Reilly realleges and incorporates by reference paragraphs 1 through 11 of this answer.

24. Denies paragraph 24.

25. Denies paragraph 25.

26. Denies paragraph 26.

27. Reilly realleges and incorporates by reference paragraphs through 11 of this answer.

28. Denies paragraph 28.

29. Denies the allegations in the first sentence of paragraph 29; admits that Reilly engaged in its activities for its own pecuniary gain, for the benefit of its employees and stockholders and in order to produce a product necessary to the protection of the environment, as well as the enhancement of the public welfare. Reilly denies that those activities were unduly dangerous.

30. Denies paragraph 30.

31. Reilly realleges and incorporates by reference paragraphs 1 through 11.

32. Denies paragraph 32.

33. Denies knowledge sufficient to form a belief with respect to the allegations in paragraph 33.

34. Admits paragraph 34.

35. Admits paragraph 35.

36. Admits paragraph 36.

37. Admits paragraph 37.

38. Admits paragraph 38.

39. Admits paragraph 39.

40. Admits that "releases," as defined in section 101(22) of the Comprehensive Environmental Response, Compensa-

tion, and Liability Act of 1980 occurred during the period 1917 to 1972, but denies that releases of hazardous substances are threatened to occur in the future; admits that components of coal tar and creosote may continue to leak and migrate so long as the St. Louis Park wells remain closed by virtue of decisions of the plaintiff, but denies that there is any hazard associated with the coal tar or creosote wastes found in the vicinity of its former plant.

41. Denies knowledge sufficient to form a belief with respect to the allegations in paragraph 41.

42. Denies paragraph 42.

43. Admits paragraph 43.

44. Denies paragraph 44.

45. Denies paragraph 45.

46. Admits that on or about March 20, 1981 the State sent a letter to Reilly and that on March 27, 1981 Reilly sent a letter to the State of Minnesota, and alleges that both letters speak for themselves.

47. Admits paragraph 47.

48. Admits paragraph 48.

49. Admits paragraph 49.

50. Admits paragraph 50.

51. Admits paragraph 51.

52. Admits paragraph 52.

53. Admits paragraph 53, except that Reilly speci-

fically denies that the substances with which it dealt were in fact hazardous.

54. Admits that "release," within the meaning of Minn. Stat. § 115B.02, subd. 15 (1984) occurred during the period 1917 to 1972, but denies that releases of hazardous substances are threatened to occur in the future.

55. Admits that releases which occurred during the period 1917 to 1972 may have included creosote and the constituents of creosote, but denies that creosote or the constituents of creosote are in fact hazardous and denies that there is any hazard associated with any release which may have occurred.

56. Denies that Reilly is "responsible" under Minn. Stat. § 115B.03 (1984) because none of the substances with which it dealt were in fact hazardous.

57. Reilly realleges and incorporates by reference paragraphs 41 and 42 of this answer.

58. Admits paragraph 58.

59. Admits that soil, ground water and drinking water supplies are "natural resources" of the State within the meaning of Minn. Stat. § 115B.02, subd. 10 (1984), but denies knowledge sufficient to form a belief that those natural resources have been negatively affected by substances released from the Reilly site.

60. Admits that the State has funded certain activities relating to the former Reilly site, but denies that



the expenses thereof are necessary or reasonable, and denies knowledge sufficient to form a belief concerning any alleged damage to natural resources.

61. Admits paragraph 61.

62. Admits that the Minnesota Pollution Control Agency and its Director have incurred costs and expenses for certain activities relating to the former Reilly site, but denies that the costs or expenses are necessary or reasonable and otherwise denies paragraph 62.

63. Except as otherwise herein expressly admitted, denies each and every allegation contained in the second amended complaint.

#### FIRST AFFIRMATIVE DEFENSE

64. The claims for relief are barred by the doctrine of laches. The claims set forth in paragraphs 20-33 of the second amended complaint, containing allegations relative to nuisance, to violation of State statutes and rules, to strict liability for unduly dangerous activities, and to negligence are barred by the statute of limitations.

#### SECOND AFFIRMATIVE DEFENSE

65. The complaints giving rise to this action were settled by agreement between the State of Minnesota, the City of St. Louis Park and this defendant by virtue of an Agreement for Purchase of Real Estate executed by the

City and this defendant April 14, 1972. The State of Minnesota accepted that settlement at that time and subsequent thereto. Said Agreement is attached hereto as Exhibit A and made a part hereof.

#### THIRD AFFIRMATIVE DEFENSE

66. The complaints giving rise to this action are not the responsibility of this defendant because of a hold harmless agreement entered into between this defendant and the City of St. Louis Park on June 19, 1973, which provides, in part, that the City will hold this defendant harmless from any and all claims which may be asserted against it by the State of Minnesota and will be fully responsible for restoring the property, at its expense, to any condition that may be required by the Minnesota Pollution Control Agency. A copy of said agreement is attached as Exhibit B and is made a part hereof.

#### FOURTH AFFIRMATIVE DEFENSE

67. The liability of the City of St. Louis Park and the non-liability of this defendant to remedy the alleged groundwater contamination problems alleged in the complaint has been fully adjudicated by the Minnesota Pollution Control Agency on behalf of the United States Environmental Protection Agency in an adjudicative administrative proceeding entitled, "in the Matter of the Application of the City of St. Louis

Park for a National Pollutant Discharge Elimination System Permit," file no. 0045489.

FIFTH AFFIRMATIVE DEFENSE

68. Alleges that Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Resource Conservation and Recovery Act of 1976, as amended, and the Minnesota Environmental Response and Liability Act, upon which the plaintiff relies in its Count I, VI, and VII violate the Fifth or Fourteenth Amendments of the United States Constitution in that application of any of these statutes to the facts of this case would deprive the defendant, Reilly of its property without due process of law.

SIXTH AFFIRMATIVE DEFENSE

69. Alleges that the complaint herein fails to state a claim upon which relief may be granted.

WHEREFORE, Reilly Tar & Chemical Corporations prays that this Court enter judgment in its favor granting no relief to the plaintiff but awarding to Reilly Tar & Chemical Corporation its costs and disbursements and such other relief as this Court deems just and appropriate.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b) Reilly demands  
a jury trial on all issues of fact.

DATED: *April 29, 1985*

DORSEY & WHITNEY

By *Michael J. Wahoske*

Edward J. Schwartzbauer

Becky Comstock

Michael J. Wahoske

2200 First Bank Place East

Minneapolis, Minnesota 55402

Telephone: (612) 340-2825/2987/8755

Attorneys for Reilly Tar &  
Chemical Corporation

AGREEMENT FOR  
PURCHASE OF REAL ESTATE

7-14-72

THIS AGREEMENT, made this 14 day of April, 1972,  
by and between Reilly Tar and Chemical Corporation (hereafter  
"Seller") and the City of St. Louis Park (hereafter "Buyer").

Seller agrees to sell and Buyer agrees to purchase  
the following described property located in the City of St. Louis  
Park, Hennepin County, Minnesota, legally described as:

Lots 25 through 40, inclusive, Block 305,  
Rearrangement of St. Louis Park

Lot 1, Auditor's Subdivision No. 231

upon the following terms and conditions:

1. Purchase Price: Earnest Money. The purchase price  
to be paid by Buyer for the subject property shall be One Million  
Nine Hundred Thousand Dollars (\$1,900,000.00). Buyer has paid  
Seller \$3,000.00 earnest money, the receipt of which is hereby  
acknowledged. The balance of \$1,895,000.00 shall be paid by  
Buyer to Seller at closing.

2. Closing. Closing shall be October 2, 1972, at the  
offices of Yngve, Yngve & Reiersgard, Attorneys, 6250 Wayzata  
Boulevard, Minneapolis, Minnesota.

3. Possession Date. Possession shall be turned over to  
Buyer as of the date of closing.

4. Condition of Premises. It is understood that as a  
part of the consideration of this purchase that the Buyer is  
acquiring said premises in an "as is" condition except for the  
provisions in number 5 of this agreement and that this "as is"  
condition includes any and all questions of soil and water im-  
purities and soil conditions; and that the City agrees to make  
no claim against the Seller for damages relative to soil and  
water impurities, if any, in any way relating to the premises sold

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herein, or relative to any other premises in which the City of St. Louis Part holds an interest. This provision shall survive the closing of this transaction.

5. Demolition, Removal, and Clean-up Work.

a) Definitions. For purposes of this section, the following definitions shall be applicable:

i) Grade (adjacent ground elevation) is the lowest point of elevation of the finished surface of the ground between the exterior wall of the building and a point five feet distant from said wall, or the lowest point of elevation of the finished surface of the ground between the exterior wall of a building and the property line of it if it is less than five feet distant from said wall. In case walls are within five feet of a public way, the grade shall be the elevation of the public way.

ii) Small masonry shall mean brick, stone, concrete, and non-organic materials 1 1/2 cubic feet or less in content and not more than 24" in any dimension and shall not be capable of compression at less than 1500 pounds per square foot that may easily be ascertained as to density by astute judgment factors of both the demolition contractor and the purchaser's engineering personnel.

b) Work to be Done. Reilly Tar and Chemical Company shall provide for demolition, removal, and clean-up work on the property as follows:

1) Demolish all buildings, structures, and attachments thereto to surrounding grade. Foundations and floors are to be removed to grade or below.

2) Remove above and below grade tanks and demolish supporting pads or legs to grade or below grade.

3) Remove all railroad railings and tie together with associated docks or other structures to surrounding grade or below. Loading dock and tar well structures are to be removed to the piling level, other pile caps, if any not included.

4) Remove above grade piping, poles, walls and miscellaneous structures.

5) Break open tunnels, pits, basements, and collars to the extent they are known to the seller and remove the below-grade piping or machinery exposed in the work.

6) Fill basements, collars, pits, tunnels, and low areas with small masonry and earth materials from the site.

7) Dispose off the site the demolition materials and debris not suitable for fill outside of St. Louis Park.

8) Remove container and piping residues and dispose of same at an off site location outside of St. Louis Park.

9) Generally level the site to grade and remove miscellaneous timber, large iron, steel, and remaining debris from site and dispose of at a location outside of St. Louis Park.

10) The site shall be free of all visible demolition materials not suitable for fill, buildings, structures, and attachments thereto remaining above grade. Site finishing shall be accomplished in a workmanlike manner to rough grade conditions.

This work shall be completed by the seller on or before the closing date of October 2, 1972.

All species of trees on the premises shall be protected from damage during the removal of structures and equipment.

This paragraph shall not be applicable to that part of the described property lying Easterly of the Easterly right-of-way line of the proposed Louisiana Avenue extension, which right-of-way line is shown in red on Exhibit A hereto. As to the part of the property lying East of the Easterly right-of-way, Buyer hereby accepts it in an "as is" condition, and Buyer shall be responsible for all demolition, removal, and clean-up work thereon.

6. Real Estate Taxes; Special Assessments. It is also agreed that at or prior to closing the Seller will pay real estate taxes due and payable in 1972 and all special assessments against the subject premises which have been levied prior to January 1, 1972, including the assessment for storm sewer, for which an appeal is now pending, Hennepin County District Court File No. 678582 and will then dismiss said appeal.

7. Seller's Warranty of Title. Subject to performance by the Buyer the Seller agrees to execute and deliver a Warranty Deed conveying marketable title to said premises subject only to the following exceptions:

- a) Building and zoning laws, ordinances, State and Federal regulations;
- b) Restrictions relating to use or improvement of premises without effective forfeiture provision;
- c) Reservation of any minerals or mineral rights to the State of Minnesota;
- d) Utility and drainage easements which do not interfere with present improvements.

8. Delivery of Abstract of Title; Marketability of Title. The Seller shall, within a reasonable time after approval of this



agreement, which an abstract of title, or Register of Property Abstract certified to date to include proper searches covering bankruptcies, and State and Federal judgments and liens. The Buyer shall be allowed 30 days after receipt thereof for examination of said title and the making of any objections thereto, said objections to be made in writing or deemed to be waived. If any objections are so made the Seller shall be allowed 180 days to make such title marketable. Pending correction of title, the payments hereunder required shall be postponed, but upon correction of title and within 10 days after written notice to the Buyer, or upon closing date, whichever date is later, the parties shall perform this agreement according to its terms. If said title is not marketable and is not made so within 180 days from the date of written objections thereto as above provided, this agreement shall, at Buyer's option, be null and void.

9. Current Litigation. It is understood that this agreement represents a means of settling the issues involved in State of Minnesota, by the Minnesota Pollution Control Agency and the City of St. Louis Park, Plaintiffs, vs. Reilly Tar & Chemical Corporation, Defendant, Hennepin County Minnesota District Court Civil File No. 670767. It is understood that the City of St. Louis Park will deliver dismissals with prejudice and without cost to defendant executed by itself and by the plaintiff State of Minnesota at closing. Defendant Reilly Tar & Chemical Corporation will deliver a dismissal of its counterclaim with prejudice and without cost to plaintiffs.

10. Equipment to Remain on Premises. Seller agrees to identify all wells and leave them intact. The Seller may, at its option, remove the pumping equipment. Seller agrees to leave water main intact and in an operable condition.

11. Continued Use of Premises. Between the date of the purchase agreement and the date of closing, the company may use

the ~~business~~ <sup>(1)</sup> manufacturing the industrial <sup>(1)</sup> purposes and shall continue all existing pollution abatement procedures that are now in place and installed. The company shall cease all business operation not later than October 1, 1972.

12. Maps, Drawings and Information Concerning the Property.

Upon acceptance of this offer to purchase, Seller shall furnish Buyer with copies of all maps, drawings, and other data and information it may possess concerning the subject property.

13. Damages for Delay of Closing. In the event this

sale is not closed on or before December 15, 1972, and in the event the purchaser, and any assignee of the purchaser, has not abandoned any right, title and interest in the premises by that date, then as additional damages, the purchaser agrees to pay the Seller an amount equal to the real estate taxes and assessments due and payable on the premises, which are payable in the year 1973, and said payment shall be due by May 1, 1973, and this provision for payment of damages, shall be deemed a payment of part of the earnest money and shall survive any cancellation of the purchase agreement.

14. Assignment of Seller's Rights. It is agreed and

understood that the City of St. Louis Park is executing this agreement on behalf of the Housing and Redevelopment Authority of St. Louis Park. The City of St. Louis Park may assign its rights hereunder to the Housing and Redevelopment Authority of St. Louis Park, or to any other party without the consent of Seller. Any such assignment shall not relieve the City of its obligations hereunder.

REILLY TAYLOR CHEMICAL CORPORATION

By

Its

President

And

Its

Vice President

465-084

CITY OF ST. LOUIS PAID

By   
Its Mayor

At   
Its City Manager

Exhibit A

TOR'S  
DIVISION

TOR'S  
SUBDIVISION

ASCC085

MEMBER

20

20

EST

KENTUCKY

LOUISIANA

LEGISLATIVE RECORDS

SCHOFFEL-MASON  
DIVISION

NO. 627

NO. 629

BROWNLOW  
AVE. GORDIAN

STREET

REPUBLIC

WOLFF HARBURG AGREEMENT

THIS AGREEMENT, entered into this 19<sup>th</sup> day of June, 1973 by and between the City of St. Louis Park and Reilly Tar and Chemical Corporation.

Whereas, on April 14, 1972 the City of St. Louis Park (hereafter "City") and Reilly Tar and Chemical Corporation (hereafter "Reilly") entered into an Agreement in which the City agreed to acquire Reilly's property in St. Louis Park;

Whereas, the acquisition of this property by the City was intended as a means of settlement of the issues involved in the State of Minnesota, by the Minnesota Pollution Control Agency and the City of St. Louis Park, Plaintiffs vs. Reilly Tar and Chemical Corporation, Defendant, Hennepin County District Court Civil File No. 670767.

Whereas, the City agreed in the Agreement of April 14, 1972 that it would deliver dismissals of the above noted action with prejudice and without cost to defendant executed by itself and by the plaintiff State of Minnesota at closing;

Whereas, the Plaintiff State of Minnesota has refused at this time to deliver a dismissal of its complaint;

Whereas, the City, and Reilly desire to close the real estate sale and purchase in the manner contemplated in the Agreement of April 14, 1972;

Therefore, it is agreed

1. Dismissal of Action by City

The City will dismiss the action, insofar as and remedy is claimed by the City with prejudice and without cost to Reilly.

2. Dismissal of Counterclaim by Reilly

Reilly will dismiss its counterclaim against the City with prejudice and without cost to the City.

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400783-460358-460361

3. City to Hold Reilly Harmless

The City hereby agrees to hold Reilly harmless from any and all claims which may be asserted against it by the State of Minnesota, acting by and through the Minnesota Pollution Control Agency, and will be fully responsible for restoring the property, at its expense, to any condition that may be required by the Minnesota Pollution Control Agency.

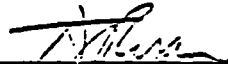

4. Hold Harmless Agreement Supplementary

The Hold Harmless Agreement in Number 3 herof is intended to be supplementary to the Agreement between the City and Reilly relative to Carl Balander & Sons, and to Paragraph 4 of the Agreement of April 14, 1972 between the City and Reilly for the purchase of real estate.

5. City and Reilly to Proceed to Closing

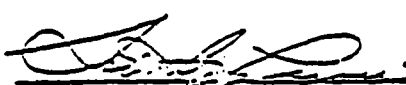
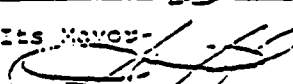

Reilly and the City will proceed to the closing of the real estate transaction contemplated by the Agreement between the parties of April 14, 1972, as amended by the Contract for Deed of October 12, 1972.

Reilly Tar and Chemical Corporation

By   
Its 

And \_\_\_\_\_  
Its \_\_\_\_\_

City of St. Louis Park

By   
Its Mayor   
And   
Its City Manager